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**UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

MMB Docket No. **1001-0728**

NCR Docket No. **9423**

Group Art Unit: **2876**

Application of: **Wike et al.**

Examiner: **Uyen-Chau N. Le**

Serial No. **10/001,389**

Filed: **October 23, 2001**

Title: **Automatic Electronic Article Surveillance for Self-Checkout**

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Mail Stop Appeal Brief - Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on
June 11, 2007

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James D. Wood

Name of person mailing Document or Fee

Signature

June 11, 2007

Date of Signature

LETTER

Sir:

Enclosed is an Appeal Brief in connection with the above-identified patent application. The Notice of Appeal was filed on April 9, 2007, and the Appeal Brief is due two months from this date. Since the due date for filing the Appeal Brief fell on Saturday, June 9, 2007, the Appeal Brief is being timely filed on Monday, June 11, 2007. Also enclosed herewith is a check for \$500.00 to cover the required fee.

Additionally, please provide any extensions of time which may be necessary and charge any fees which may be due to Account No. 13-0014, but not to include any payment of issue fees.

Respectfully submitted,

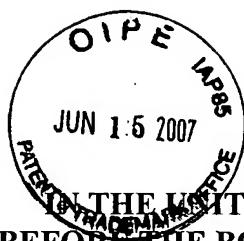
MAGINOT, MOORE & BECK LLP

A handwritten signature in black ink, appearing to read "James D. Wood", written over a horizontal line.

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June 11, 2007

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THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

NCR Docket No. **9423**

MMB Docket No. **1001-0728**

Confirmation No. **1315**

Application of: **Wike et al.**

Group Art Unit: **2876**

Serial No. **10/001,389**

Examiner: **Uyen-Chau N Le**

Filed: **October 23, 2001**

For: **Automatic Electronic Article Surveillance for Self-Checkout**

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APPEAL BRIEF

Sir:

This is an appeal under 37 CFR § 41.31 to the Board of Patent Appeals and Interferences of the United States Patent and Trademark Office from the rejection of the claims 8-27 of the above-identified patent application. These claims were indicated as rejected in an Office Action dated January 8, 2007. The \$500.00 fee required under 37 CFR § 41.20(b) (2) is submitted herewith. Also, please provide any extensions of time

that may be necessary and charge any fees that may be due to Account No. 13-0014, but not to include any payment of issue fees.

(1) REAL PARTY IN INTEREST

NCR Corporation of Dayton, Ohio is the assignee of this patent application, and the real party in interest.

(2) RELATED APPEALS AND INTERFERENCES

There are no appeals or interferences related to this patent application (serial no. 10/001,389).

(3) STATUS OF CLAIMS

Claims 1-27 are pending in the application.

Claims 1-7 are allowed.

Claims 8-27 are rejected.

Claims 8-27 are being appealed, and are shown in the Appendix attached to this Appeal Brief.

(4) STATUS OF AMENDMENTS

Appellants have filed no amendments after receipt of the January 8, 2007 Office Action (the "Office Action").

(5) SUMMARY OF CLAIMED SUBJECT MATTER

The present invention relates to a retail terminal, such as a self-service or checkout retail terminal (SCOT), and a method of operation thereof. The retail terminal includes an electronic article surveillance (EAS) system. The EAS system includes an EAS detector and an EAS deactivator. (See, e.g., Appellants' specification at page 11, lines 18-19 and at page 12, lines 15-16.) The EAS detector, which may be associated with a scanner, is operative to detect an EAS tag on an item. (See, e.g., Appellants' specification at page 11, lines 18-19.) In one non-limiting embodiment, the EAS detector is a coil and electronic circuitry and may be provided as an add-on or module. (See, e.g., Appellants' specification at page 12, lines 4-6 and page 25, lines 9-11.) The EAS deactivator is operative to deactivate an EAS tag.

In one non-limiting example, a self-checkout includes a processor operably connected to a scanner, an EAS detector, an EAS deactivator, and a memory that is operably connected to the processor. (See, e.g., Appellants' specification at page 19, line 11 through page 20, line 4 and FIG. 3.)

In accordance with one embodiment of the invention, a second EAS detector is located proximate the bagwell or security scale. (See, e.g., Appellants' specification at page 23, line 9 through page 24, line 18.) The second EAS detector may be used to double check whether or not a tag authorized to be deactivated has in fact been deactivated. (See, e.g., Appellants' specification at page 24, lines 11-15.)

According to one method, a customer scans an item. (See, e.g., Appellants' specification at page 27, lines 21-22 and FIG. 9.) During or after the scanning of the item, a detector senses whether or not the item has an EAS tag. (See, e.g., Appellants'

specification at page 27, lines 22-23.) If the item has an EAS tag, the customer is directed to deactivate the EAS tag. (See, e.g., Appellants' specification at page 28, lines 2-3.) After deactivating or attempting to deactivate the EAS tag, the customer places the item into the bagwell, where a second detector checks to verify that the authorized deactivation has occurred. (See, e.g., Appellants' specification at page 28, lines 4-7.)

The additional information required by the United States Patent Office is as follows.

Claim 8

Claim 8 recites:

A self checkout comprising (see, e.g. Appellants' specification at page 10, lines 6-7 and FIGs. 3 and 5):

a scanner operative to scan an item (see, e.g. Appellants' specification at page 10, lines 613-19 and FIGs. 3 and 5);

an electronic article surveillance detector operative to detect whether a successfully scanned item has an active electronic article surveillance tag (see, e.g. Appellants' specification at page 12, lines 1-12 , page 26, lines 4-5 and FIGs. 5 and 7); and

an electronic article surveillance deactivator operative to deactivate the active electronic article surveillance tag after determining by the electronic article surveillance detector that a scanned item has the active electronic article surveillance tag (see, e.g. Appellants' specification at page 12, lines 1-12 , page 26, lines 7-10 and FIGs. 5 and 7).

Claim 15

Claim 15 recites:

A self checkout comprising (see, e.g. Appellants' specification at page 10, lines 6-7 and FIGs. 3 and 5):

a processor;

a scanner in communication with the processor (see, e.g. Appellants' specification at page 10, lines 613-19 and FIGs. 3 and 5);

an electronic article surveillance detector in communication with the processor (see, e.g. Appellants' specification at page 12, lines 1-12 , page 26, lines 4-5 and FIGs. 5 and 7);

an electronic article surveillance deactivator (see, e.g. Appellants' specification at page 12, lines 1-12 , page 26, lines 7-10 and FIGs. 5 and 7); and

a memory in communication with the processor (see, e.g. Appellants' specification at page 19, lines 20-23 and FIG. 3) and storing program instructions (see, e.g. Appellants' specification at page 20, lines 5-7) which, when executed by the processor, causes the processor to: (a) allow scanning of an item for purchase via the scanner (see, e.g. Appellants' specification at page 20, lines 7-14), (b) determine, after successful scanning of the item, whether the item has an active electronic article surveillance tag via the electronic article surveillance detector (see, e.g. Appellants' specification at page 20, lines 15-21, page 26, lines 4-5 and FIG. 7), and (c) allow deactivation of the active electronic article surveillance tag after determining that the item includes an electronic article surveillance tag (see, e.g. Appellants' specification at page 21, lines 1-3).

Claim 21

Claim 21 recites:

A method of operating a checkout terminal comprising:

scanning an item with a scanner (see, e.g. Appellants' specification at page 26, lines 3-4 and FIG. 7);

determining that the scanned item has an electronic article surveillance tag (see, e.g. Appellants' specification at page 26, lines 4-5 and FIG. 7);

allowing, after the step of determining, deactivation of the electronic article (see, e.g. Appellants' specification at page 26, lines 7-11 and FIG. 7); and

disabling the scanner from scanning other items based upon the step of determining (see, e.g. Appellants' specification at page 20, line 21 through page 21, line 1).

(6) GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Claims 21-22 and 25 stand rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,333,692 to Andersen et al. (hereinafter "Andersen").

Claims 8-9, 13-16, 20 and 23 stand rejected as obvious under 35 U.S.C. §103(a) over Anderson in view of U.S. Patent no. 5,341,125 A to Plonsky et al. (hereinafter "Plonsky").

Claim 24 stands rejected under 35 U.S.C. 103(a) as being obvious over Andersen in view of U.S. Patent No. 6,598,791 B2 to Bellis, Jr. et al. (hereinafter "Bellis").

Claims 10-12 and 17-19 stands rejected under 35 U.S.C. 103(a) as being obvious over Andersen in view of Plonsky and Bellis.

Claim 26 stands rejected under 35 U.S.C. 103(a) over Andersen in view of U.S. Patent No. 5,469,142 to Bergman et al. (hereinafter "Bergman").

Claim 27 stands rejected under 35 U.S.C. 103(a) over Andersen in view of Bellis in further view of Bergman.

(7) ARGUMENT

Claims 21-22 and 25 Are Not Anticipated by Andersen

Discussion re: Patentability of Claim 21

1. Claim 21

Claim 21 recites the following:

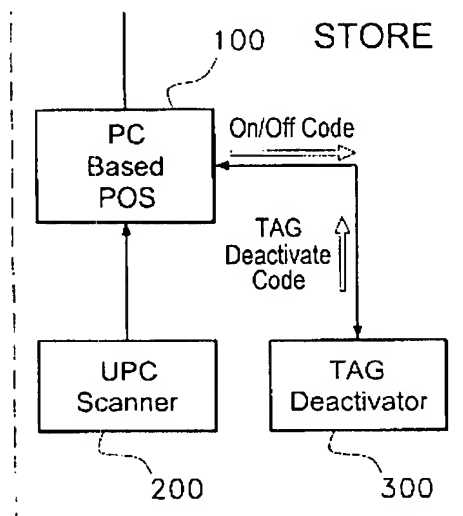
A method of operating a checkout terminal comprising:
scanning an item with a scanner;
determining that the scanned item has an electronic article surveillance tag;
allowing, after the step of determining, deactivation of the electronic article; and
disabling the scanner from scanning other items based upon the step of determining.

Thus, claim 21 recites a method wherein in response to a determination that a first item has an EAS tag the scanning of *other* items is disabled. In the context of the Appellants' specification, the terms "scanner" and "deactivator" are not interchangeable. Rather, a "scanner" or the process of scanning is consistently used to identify a device that is used, for example, to *read* a UPC code. (See, e.g., Applicants' specification at page 2, lines 11-15 and page 10, lines 13-19). Thus, as used in the Applicants' specification and in claim 21, "scanning" an item refers to reading identification of a specific item that is being purchased using a reader. Therefore, claim 21 recites that a determination that the first item has an EAS tag disables the system from reading the identification of *other* items.

2. Andersen Does Not Disclose Disabling as Claimed

The Examiner has alleged that Andersen discloses the disabling of scanning at column 9, lines 24-34. (Office Action at page 3). Andersen does not disclose disabling a scanner as recited in claim 21.

At column 9, lines 24-34 Andersen discloses a Scan Inhibit function that is used for the *same* item that has been scanned. More specifically, Andersen uses the word “scan” to describe two distinct operations. Andersen describes reading the identification of an item through obtaining the item’s UPC code as “scanning”. (See, e.g., Andersen at column 7, lines 18-20). Andersen also uses the word “scanning” in reference to the passing of an EAS tag through a deactivator. (See, e.g., Andersen at column 7, lines 19-26). The “Scan Inhibit” function is used to control the second type of operations, the activation/deactivation of the EAS deactivator. (Andersen at column 9, lines 24-27). Specifically, Andersen states that this function is used “to determine whether to activate/deactivate the deactivator device 300.” (Andersen at column 9, lines 24-26). As shown in FIG. 1 of Andersen, a portion of which is set forth below, the deactivator device is *separate* from the scanner device 200.



Thus, Andersen discloses scanning an item to obtain a UPC code (identifying the item) and searching a database to determine whether or not the identified item should be subjected to the potentially deleterious effects of a deactivator. (Andersen at column 9, lines 29-30). If the identified item is sensitive to a deactivator, e.g., “magnetic tapes, film and other merchandise that should not be scanned through the deactivator” (Andersen at column 7, lines 23-26), then the deactivator is deactivated by the Scan Inhibit function. (Andersen at column 9, lines 35-38).

Therefore, the “Scan Inhibit” function of Andersen is directed to the energization/deenergization of the *deactivator* 300 for a particular item based upon the prior use of the reader 200 on that particular item. Andersen does not, however, disclose the inhibiting of the scanner 200, and it is the scanner 200 that Andersen teaches is used to read an item into the system. (See, e.g., Andersen at column 4, lines 48-53). In contrast, the method of claim 21 disables the *scanner* based upon the determination that a scanned device has an EAS tag. Selective energization of a deactivator based upon the nature of an item scanned into the system is not the same as inhibiting the scanning of *other* items once an item with an EAS tag is identified. Thus, Andersen does not disclose “disabling the scanner from scanning other items based upon the step of determining.”

In response to the Appellants’ previous arguments, the Examiner has defended the rejection of claim 21 stating:

[T]he Examiner respectfully requests the Applicant to further review Andersen wherein during the step of determining (i.e., lookup function performance) whether or not the UPC carrying a security tag, a scan inhibit function is enable to prevent items from being scanned via scanner 200 (col. 9, lines 24-46).

(Office Action at page 13). After carefully studying the cited passage, there is no indication whatsoever that the scanner 200 is ever inhibited. Rather, only the deactivator is inhibited.

Anticipation under 35 U.S.C. § 102 is proper only if the prior art reference discloses each and every element of the claim. Accordingly, because claim 21 recites “disabling the scanner from scanning other items based upon the step of determining” and Andersen does not disclose any such method, the Board of Appeals is respectfully requested to reverse this rejection of claim 21.

Discussion Regarding the Patentability of Claims 22 and 25

Claims 22 and 25 also stand rejected as allegedly being anticipated by Andersen. Claims 22 and 25 depend from and incorporate all of the limitations of claim 21. Claims 22 and 25 further recite additional limitations. Accordingly, for at least the same reasons as those set forth above in connection with claim 21, it is respectfully submitted that claims 22 and 25 are patentable over the prior art.

Claims 8-9, 13-16 and 20 Are Not Obvious

Discussion re: Patentability of Claim 8

1. Claim 8

Claim 8 recites the following:

A self checkout comprising:
 a scanner operative to scan an item;
 an electronic article surveillance detector operative to detect whether a successfully scanned item has an active electronic article surveillance tag; and
 an electronic article surveillance deactivator operative to deactivate the active electronic article surveillance tag after determining by the electronic article surveillance detector that a scanned item has the active electronic article surveillance tag.

Thus, claim 8 recites a checkout wherein in response to an EAS tag being detected with a scanned item, a deactivator is allowed to deactivate the EAS tag.

2. There is No Motivation for the Proposed Modification

The Examiner has rejected claim 8 based primarily upon Andersen with reliance on Plonsky for teaching an EAS detector. (Office Action at pages 5-6). Specifically, the Examiner has proposed the use of Plonsky's EAS detector "in lieu of performing a look-up PLU process." (Office Action at page 6). The motivation for the proposed modification is to "enhance the system accuracy and reduce time consumption." (Office Action at page 6). There is no motivation for the proposed modification.

The system of Andersen is directed toward resolving a problem of "easily and accurately [ascertaining] whether each of [the] products which should have been tagged in fact were." (Andersen at page 2, lines 15-17). Accordingly, the system of Andersen uses "a UPC code, or SKU, which is stored in a database either on the PC based POS 100 or at in-store processor 30... for correlating or identifying an item scanned as a tagged item which, therefore, should be properly deactivated by the deactivating unit 300." (Andersen at column 5, lines 10-15). Therefore, the accuracy of the system of Andersen depends upon the reading of the PLU code so as to determine if an article is properly tagged. The omission of the PLU lookup as proposed by the Examiner eviscerates the ability of the system of Andersen to compare the UPC count with the number of deactivations. (See, e.g., Andersen at column 6, line 5 through column 7, line 44).

Another problem addressed by the system of Andersen is the identification of potentially sensitive items prior to exposing those items to a degaussing field. (Andersen

at column 2, lines 36-38). The PLU lookup is used to ensure that sensitive media is not subjected to transmitted energy. (See, e.g., Andersen at column 5, line 42 through column 6, line 5). The omission of the PLU lookup eviscerates the ability of the system of Andersen to identify sensitive items prior to application of external energy.

As the BPAI stated in the BPAI Decision on the Appellants' prior appeal, "[t]he mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. (BPAI Decision at page 5, citing to *In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990)). Accordingly, because there is no teaching or suggestion to one skilled in the art to modify Andersen with Plonsky, a *prima facie* case of obviousness under 35 U.S.C. § 103 has not been established with regard to the invention of claim 8. Accordingly, the Board of Appeals is respectfully requested to reverse this rejection of claim 8.

3. The Examiner's Line of Reasoning is Not Convincing

Moreover, the Examiner has not explained how the replacement of a PLU lookup system with the detector/deactivator of Plonsky would achieve a reduction in "time consumption" or why "time reduction" would be a benefit. (Office Action at page 6). Therefore, the line of reasoning for the proposed modification is not clear.

To the extent the Examiner intended to infer that the system of Andersen delayed the checkout procedure in performing the PLU lookup function, Andersen at column 9, lines 27-34 discloses the local storage of the PLU codes for sensitive data so as to avoid any timing issues. Thus, the system of Andersen does not suffer from a defect that a reduction in time consumption would address.

Therefore, the line of reasoning proposed by the Examiner does not make sense. Accordingly, the reasoning is not convincing. Because the Examiner has failed to provide a convincing line of reasoning as required by MPEP § 2144, citing to *Ex parte Clapp*, 227 USPQ 972 (Bd. Pat. App. & Inter. 1985), the Examiner has failed to provide a *prima facie* case of obviousness. Accordingly, the Board of Appeals is respectfully requested to reverse this rejection of claim 8.

4. Conclusion as to Claim 8

Therefore, for any of the above reasons, the Examiner has failed to provide a *prima facie* case of obviousness. Accordingly, the Board of Appeals is respectfully requested to reverse this rejection of claim 8.

Discussion Regarding the Patentability of Claims 9, 13-16 and 20

The Examiner has also acknowledged that Andersen fails to teach, suggest or disclose all of the limitations found in claims 9, 13-16 and 20. (Office Action at page 5). The Examiner has relied upon Plonsky for disclosing the limitations lacking in Andersen based upon the same motivation discussed above with respect to claim 8. Therefore, because there is no motivation to modify Andersen as proposed by the Examiner for the reasons discussed above with respect to claim 8, the Appellants respectfully submit that claims 9, 13-16 and 20 are patentable over the prior art.

Claim 23 is Not Obvious

1. Claim 23

Claim 23 recites the following:

The method of claim 21, wherein the determining comprises determining that the item has an electronic article surveillance tag with a first electronic article surveillance tag detector.

Thus, claim 23 recites a checkout wherein in response to an EAS tag being detected with an EAS tag detector, a deactivator is allowed to deactivate the EAS tag.

2. The Discussion of Claim 21 Applies

As an initial matter, claim 23 depends from claim 21 and incorporates all of the limitations of claim 21. The Examiner has relied primarily upon the teaching of Andersen with further reference to Plonsky for the limitations added by claim 23. (Office Action at page 5). As discussed above, Andersen fails to disclose each of the limitations of claim 21. Accordingly, even if Andersen is modified to incorporate the EAS detector of Plonsky, such modification fails to correct the deficiencies of Andersen with respect to the limitations of claim 21. Therefore, in addition to the reasons discussed below, claim 23 is patentable over the prior art for at least the same reasons as those set forth above in connection with claim 21.

3. The Discussion of Claim 8 Applies

Additionally, the Examiner has relied upon Plonsky for disclosing the limitations lacking in Andersen based upon the same motivation discussed above with respect to claim 8. Therefore, because there is no motivation to modify Andersen as proposed by

the Examiner for the reasons discussed above with respect to claim 8, the Appellants respectfully submit that claim 23 is patentable over the prior art.

4. Conclusion as to Claim 23

Therefore, for any of the above reasons, the Examiner has failed to provide a *prima facie* case of obviousness. Accordingly, the Board of Appeals is respectfully requested to reverse this rejection of claim 23.

Claim 24 is Not Obvious

1. The Discussion of Claim 23 Applies

As an initial matter, claim 24 depends from claim 23 and includes all of the limitations of claim 23. The Examiner has rejected claim 24 based primarily upon Andersen and Plonsky with reliance on Bellis for teaching an EAS detector in a bagwell.¹ (Office Action at page 7). Accordingly, the proposed modification fails to correct the deficiencies of Andersen and Plonsky discussed above with respect to the elements of claim 23. Therefore, a *prima facie* case of obviousness has not been presented with respect to claim 24. Accordingly, the Board of Appeals is respectfully requested to reverse this rejection of claim 24.

2. There is No Motivation for the Proposed Modification

Moreover, the Examiner has proposed the incorporation of an EAS detector in a bagwell as taught by Bellis. (Office Action at page 7). The motivation for the proposed

modification is to ensure that all EAS tags are completely deactivated and to “prevent unscanned/unpaid items being bagged.” (Office Action at page 7). There is no motivation for the proposed modification.

Specifically, neither of the references identified by the Examiner provides any teaching, disclosure or suggestion for incorporating a “double check” on the system to ensure all tags are deactivated prior to the item leaving the store. As discussed above, the problem addressed by Andersen is the verification that items that should be tagged are in fact tagged. Bellis is directed toward the use of the weight of a group of items to verify that the scanned items are the items placed onto a scale. (See, e.g., Bellis at column 2, lines 5-28).

Thus, not only are the references void of any mention of a double-check of EAS tag deactivation, the disparity of problems addressed and the manner in which they are addressed by the references do not suggest any particular combination. Therefore, the motivation for combining the references in the manner proposed by the Examiner could only come from the Applicants’ disclosure. Accordingly, because there is no teaching or suggestion to one skilled in the art to modify Andersen and Plonsky with Bellis other than the Applicants’ disclosure, a *prima facie* case of obviousness under 35 U.S.C. § 103 has not been established with regard to the invention of claim 24. Accordingly, the Board of Appeals is respectfully requested to reverse this rejection of claim 24.

¹ The Examiner apparently intended to include Plonsky in this rejection. Accordingly, Plonsky is addressed herein.

3. Conclusion as to Claim 24

Therefore, for any of the above reasons, the Examiner has failed to provide a *prima facie* case of obviousness. Accordingly, the Board of Appeals is respectfully requested to reverse this rejection of claim 24.

Claims 10-12 and 17-19 Are Not Obvious

1. The Discussion of Claims 8 and 15 Apply

Claims 10-12 depend from claim 8 and include all of the limitations of claim 8. Claims 17-19 depend from claim 15 and include all of the limitations of claim 15. The Examiner has acknowledged that Andersen fails to teach, suggest or disclose all of the limitations found in claims 8 and 15. (Office Action at page 5). The Examiner has relied upon Plonsky as disclosing the limitations lacking in Andersen based upon the motivation discussed above with respect to claim 8. Therefore, because there is no motivation to modify Andersen as proposed by the Examiner for the reasons discussed above with respect to claims 8 and 15, the Applicants respectfully submit that claims 10-12 and 17-19 are patentable over the prior art.

2. The Discussion of Claim 24 Applies

Moreover, the Examiner has also acknowledged that the combination of Andersen and Plonsky fails to teach, suggest or disclose all of the limitations added by claims 10-12 and 17-19. (Office Action at page 8). The Examiner has relied upon Bellis for disclosing limitations lacking in Andersen and Plonsky based upon the same motivation discussed above with respect to claim 24. Therefore, because there is no motivation to

modify Andersen and Plonsky as proposed by the Examiner for the reasons discussed above with respect to claim 24, the Applicants respectfully submit that claims 10-12 and 17-19 are patentable over the prior art.

3. Conclusion as to Claims 10-12 and 17-19

Therefore, for any of the above reasons, the Examiner has failed to provide a *prima facie* case of obviousness. Accordingly, the Board of Appeals is respectfully requested to reverse the rejection of claims 10-12 and 17-19.

Claim 26 is Not Obvious

Claim 26 depends from claim 21 and includes all of the limitations of claim 21. The Examiner has rejected claim 26 based primarily upon Andersen with reliance on Bergman for teaching the indication of a need for intervention. (Office Action at page 9). Even if Andersen is modified to incorporate the intervention of Bergman, such modification fails to correct the deficiencies of Andersen with respect to the limitations of claim 21 as discussed above. Therefore, a *prima facie* case of obviousness has not been presented with respect to claim 26. Accordingly, the Board of Appeals is respectfully requested to reverse this rejection of claim 26.

Claim 27 is Not Obvious

1. The Discussion of Claim 21 Applies

As an initial matter, Claim 27 depends from claim 21 and includes all of the limitations of claim 21. The Examiner has rejected claim 27 based primarily upon

Andersen with reliance on Bellis for teaching an EAS detector in a bagwell. (Office Action at page 10). Accordingly, the proposed modification fails to correct the deficiencies of Andersen discussed above with respect to the elements of claim 21.

Therefore, a *prima facie* case of obviousness has not been presented with respect to claim 27. Accordingly, the Board of Appeals is respectfully requested to reverse this rejection of claim 27.

2. There is No Motivation for the Proposed Modification

Moreover, the Examiner has acknowledged that Andersen fails to teach, suggest or disclose all of the limitations added by claim 27. (Office Action at page 10). The Examiner has relied upon Bellis for disclosing limitations lacking in Andersen based upon the same motivation discussed above with respect to claim 24. Therefore, because there is no motivation to modify Andersen as proposed by the Examiner for the reasons discussed above with respect to claim 24, the Applicants respectfully submit that claim 27 is patentable over the prior art.

3. Conclusion as to Claim 27

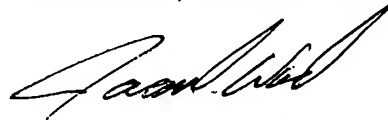
Therefore, for any of the above reasons, the Examiner has failed to provide a *prima facie* case of obviousness. Accordingly, the Board of Appeals is respectfully requested to reverse this rejection of claim 27.

CONCLUSION

Claims 21-22 and 25 are not anticipated by Andersen. Additionally, claims 8-9, 13-16, 20 and 23 are not obvious over Anderson in view of Plonsky, claim 24 is not obvious over Andersen and Plonsky in view of Bellis, claims 10-12 and 17-19 are not obvious over Andersen in view of Plonsky and Bellis, claim 26 is not obvious over Andersen in view of Bergman and claim 27 is not obvious over Andersen in view of Bellis in further view of Bergman. Accordingly, the Board of Appeals is respectfully requested to reverse the rejections of claims 8-27.

Respectfully submitted,

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(8) CLAIMS APPENDIX

Claim 8. A self checkout comprising:

a scanner operative to scan an item;
an electronic article surveillance detector operative to detect whether a successfully scanned item has an active electronic article surveillance tag; and
an electronic article surveillance deactivator operative to deactivate the active electronic article surveillance tag after determining by the electronic article surveillance detector that a scanned item has the active electronic article surveillance tag.

Claim 9. The self checkout of claim 8, wherein the electronic article surveillance detector is associated with the scanner.

Claim 10. The self checkout of claim 8, further comprising a second electronic article surveillance detector that is operative to determine whether the electronic article surveillance tag has been deactivated by the electronic article surveillance deactivator.

Claim 11. The self checkout of claim 10, wherein the second electronic article surveillance detector is associated with a bagwell of the self checkout.

Claim 12. The self checkout of claim 10, wherein the second electronic article surveillance detector is associated with a security scale of the self checkout.

Claim 13. The self checkout of claim 8, wherein the electronic article surveillance detector comprises a coil and electronic circuitry/logic that is operative to obtain a signal from the coil indicative of the active electronic article surveillance tag.

Claim 14. The self checkout of claim 13, wherein the coil and electronic circuitry/logic are modular.

Claim 15. A self checkout comprising:

a processor;

a scanner in communication with the processor;

an electronic article surveillance detector in communication with the processor;

an electronic article surveillance deactivator; and

a memory in communication with the processor and storing program instructions

which, when executed by the processor, causes the processor to: (a) allow scanning of an item for purchase via the scanner, (b) determine, after successful scanning of the item, whether the item has an active electronic article surveillance tag via the electronic article surveillance detector, and (c) allow deactivation of the active electronic article surveillance tag after determining that the item includes an electronic article surveillance tag.

Claim 16. The self checkout of claim 15, wherein the electronic article surveillance detector is associated with the scanner.

Claim 17. The self checkout of claim 15, further comprising a second electronic article surveillance detector, and the memory has further program instructions which, when executed by the processor, causes the processor to determine via the second article surveillance detector whether the electronic article surveillance tag has been deactivated by the electronic article surveillance deactivator.

Claim 18. The self checkout of claim 17, wherein the second electronic article surveillance detector is associated with a bagwell of the self checkout.

Claim 19. The self checkout of claim 17, wherein the second electronic article surveillance detector is associated with a security scale of the self checkout.

Claim 20. The self checkout of claim 15, wherein the electronic article surveillance detector comprises a coil and electronic circuitry/logic, and the memory has further

program instructions which, when executed by the processor, causes the processor to cause the electronic circuitry/logic obtain a signal from the coil indicative of the active electronic article surveillance tag.

Claim 21. A method of operating a checkout terminal comprising:
scanning an item with a scanner;
determining that the scanned item has an electronic article surveillance tag;
allowing, after the step of determining, deactivation of the electronic article; and
disabling the scanner from scanning other items based upon the step of determining.

Claim 22. The method of claim 21, further comprising:
activating an indicia identifying the location of an active electronic article surveillance tag deactivator; and wherein the step of allowing further comprises allowing deactivation of the electronic article surveillance tag with an active electronic article surveillance tag deactivator.

Claim 23. The method of claim 21, wherein the determining comprises determining that the item has an electronic article surveillance tag with a first electronic article surveillance tag detector.

Claim 24. The method of claim 23, further comprising:
verifying, with a second electronic article surveillance tag detector, that the electronic article surveillance tag has been deactivated.

Claim 25. The method of claim 21, wherein the disabling comprises disabling the scanner from scanning other items until the electronic article surveillance tag has been deactivated.

Claim 26. The method of claim 21, further comprising:

indicating that an intervention is needed if the electronic article surveillance tag has not been deactivated within a predetermined time of allowing the deactivation.

Claim 27. The method of claim 21, further comprising:

detecting the electronic article surveillance tag with an electronic article surveillance tag detector located in a bagging area of the terminal; and
indicating that an intervention is needed if the electronic article surveillance tag has not been deactivated within a predetermined time of allowing the deactivation.

(9) EVIDENCE APPENDIX

None.

(10) RELATED PROCEEDINGS APPENDIX

None.